

**REMARKS**

This amendment is responsive to the non-final Office Action of May 8, 2008. Reconsideration and allowance of claims 1-13, 15, 17-19, and 21-34 are requested.

**Election**

The applicants elect Group I, *with traverse*. Claims 1-13, 15-17, 24-30, and 34 read on the elected Group.

Contrary to the Examiner's assertion, claims 1 and 9 are not related as combination/subcombination claims. Rather, claims 1 and 9 are directed to the same combination, but differ in breadth. To emphasize that claims 1 and 9 differ only in breadth, with claim 9 being more limited than claim 1, claim 9 has been amended to depend from claim 1. As can now be more clearly seen, claim 9 includes each of the elements of claim 1, but claims several of the elements with greater specificity. Because Groups I and II each include the same elements but claimed merely with different breadth, it is submitted that Group I and Group II are not related as combination/subcombination claims, and that restriction on this basis is improper. Accordingly, it is submitted that with this amendment, claims 1-13, 15, 17 and 27-30 all fall in elected Group I.

Second, claims 1 and 24 are not related as combination/subcombination claims. Rather, claims 1 and 24 differ only in breadth. It is noted that the Examiner does not identify which of claims 1 and 24 is alleged to be the combination and which is alleged to be the subcombination. The applicant has added subparagraphs to claim 24 to emphasize that, as amended, it is directed to the same combination as claim 1. Specifically, claims 1 and 24 each call for (1) at least one biological signal sensor, (2) at least physical activity sensor, (3) a processor or processing means coupled to the sensors, (4) an activity threshold detector, (5) a user interface, and (6) an adaptive communication controller or a means for adaptively controlling communication. Thus, claims 1 and 24 are directed to the same combination, differing only in breadth. Claim 24, as amended, now falls in Group I.

Because claims 24-26 are classified in the same class and subclass and are directed to the same combination, it is submitted that restriction between claim 1 and the claims dependent therefrom and claim 24 and the claims dependent therefrom is improper and must be withdrawn.

No restriction was made regarding new claim 34. Claim 34 sets forth an analogous combination, but in means plus function format. It is submitted that claim 34 falls in Group I.

Restriction between the method and apparatus claims is improper. First, the method and apparatus claims have already been searched, considered by the Examiner, and had an Office Action issued on them. Moreover, it is noted that of the references developed in the search, the same two references were applied to both the method and the apparatus claims. Furthermore, claim 18 has been amended only to cure 35 U.S.C. § 112 issues. Claim 18 is still of the same scope as it was when it was searched, considered, and the Office Action was issued. It differs only in clarity of antecedent bases. Because the Examiner has already considered and issued an Office Action on claim 18 with its current scope, it is submitted that no further search or consideration need be performed in order to act on claim 18 (for the reasons set forth in the February 12, 2008 Amendment A, allow claim 18).

Restriction is only proper if it is shown that conditions (1) or (2) of MPEP § 806.05(e) exist. In the Restriction between Groups I and IV, the Examiner asserts that the apparatus can be used by a materially different process, such as a method of stimulating the heart in order to treat tachyarrhythmia versus a method for communicating information about the patient. To the contrary, the method and apparatus claims both call for communicating information to the patient. Note, in particular, method claims 22 and 23, which call for communicating to the patient or transmitting an alert signal to the patient, and claim 24, which calls for at least two types of alarms. Alarms, of course, are a form of communication. It is not noted where in either Group I or Group IV the concept of treating tachyarrhythmia is expressly set forth.

Further, it is submitted that restriction between the apparatus and the method is improper, because the apparatus of claim 34 cannot be used to perform a materially different method than the method of claim 23 and the method of claim 23

cannot be performed with a materially different apparatus than the apparatus of claim 34. Accordingly, it is submitted that restriction between the method claims of Group III and the apparatus claims of Group I is improper.

Regarding the five alleged reasons for restriction in paragraph 6 and labeled paragraphs (a)-(b), the applicants reply as follows:

- (a) all apparatus claims have the same classification;
- (b) the Examiner has made no showing or allegation that the various claims have acquired a separate status in the art;
- (c) the claims of all groups have a common field of search which, has already been searched;
- (d) the same art has already been applied to the claims of all Groups;
- (e) no 35 U.S.C. § 101 or 35 U.S.C. § 112, first paragraph issues were raised by the Examiner in the first Office Action and there is no allegation that any would be proper now.

### CONCLUSION

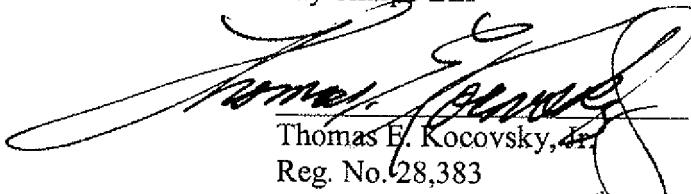
For the reasons set forth above, it is submitted that the Restriction Requirement should be withdrawn, and that an Office Action on the merits for all claims should be issued. For the reasons set forth in Amendment A of February 12, 2008, it is submitted that the Office Action on the merits of all claims should be an allowance of all claims.

An early allowance of all claims is requested.

In the event the Examiner considers personal contact advantageous to the disposition of this case, she is requested to telephone Thomas Kocovsky at (216) 861-5582.

Respectfully submitted,

Fay Sharpe LLP



Thomas E. Kocovsky, Jr.  
Reg. No. 28,383  
1100 Superior Avenue, 7<sup>th</sup> Floor  
Cleveland, OH 44114-2579  
(216) 861-5582